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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,241	06/23/2006	Shuya Kishimoto	040373-0392	1477
22428 7590 12/08/2008 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
TRAN, PABLO N				
ART UNIT		PAPER NUMBER		
2618				
MAIL DATE		DELIVERY MODE		
12/08/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/584,241

**Applicant(s)**

KISHIMOTO ET AL.

**Examiner**

Pablo N. Tran

**Art Unit**

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6 and 12-17, drawn to a communication apparatus wherein a value of  $\alpha + \beta$  is controlled by the control means under a relationship of:  
 $\alpha - \beta + \gamma = 2n\pi$  ( $n$  is an integer). See figure 6.

II. Claims 1-5, 7-8, 12-16, and 18-19, drawn to a communication apparatus wherein a value of  $(\alpha + \delta) + (\gamma + \psi)$  is controlled by said control means under a relationship of:  $(\alpha + \delta) - (\beta + \phi) + (\gamma + \psi) = 2n\pi$  ( $n$  is an integer). See Figure 10 and Figure 11.

III. Claims 1-5, 9, 12-16, and 20, drawn to a communication apparatus wherein a value of  $(\alpha + \delta) + (\gamma + \psi)$  is controlled by said control means under a relationship of:  $(\alpha + \delta) - (\beta + \phi) + (\gamma + \psi) = 2n\pi$  ( $n$  is an integer). See Figure 12.

IV. Claims 1-5, 10, 12-16, and 21, drawn to a communication apparatus wherein a value of  $(\alpha + \delta) + (\gamma + \psi)$  is controlled by said control means under a relationship of:  $(\alpha + \delta) - (\beta + \phi) + (\gamma + \psi) = 2n\pi$  ( $n$  is an integer). See Figure 15.

V. Claims 1-5, 11, 12-16, and 22, drawn to a communication apparatus wherein a value of  $(\alpha + \delta) + (\gamma + \psi)$  is controlled by said control means

under a relationship of:  $(\alpha + \delta) - (\beta + \phi) + (\gamma + \psi) = 2n\pi$ . ( $n$  is an integer). See Figure 16.

2. The inventions are distinct, each from the other because:

Inventions Group I, Group II, Group III, Group IV, and Group V are species claims. And, the Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is the generic claims. See MPEP § 806.05(d).

3. Because these inventions are independent and distinct for the reason(s) given above and have acquired a separate status in the art as shown above by their recognized divergent subject matter and a different field of search is required for each group (see MPEP § 808.02), restriction for examination purposes as indicated is proper

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention or a species to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

5. The election of an invention or a species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (571)272-7898. The examiner normal hours are 9:30 -5:00 (Monday-Friday). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (571)272-7899. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) System. Status information for Published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-directauspto.gov>. Should You have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (in USA or CANADA) or 571-272-1000.

December 4, 2008

/Pablo N Tran/

Primary Examiner, Art Unit 2618